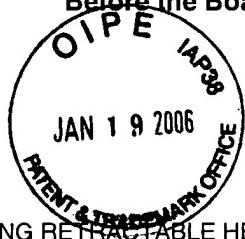


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences



In re Patent Application of

WIRTH, Jr. et al

Serial No. 10/696,587

Filed: October 30, 2003

Title: PUSH BLOCK HAVING RETRACTABLE HEEL

Atty Dkt. 3584-33

C# M#

TC/A.U.: 3724

Examiner: Nguyen, P.

Date: January 19, 2006

[Handwritten signature]

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Correspondence Address Indication Form Attached.

NOTICE OF APPEAL

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting \$500.00 (1401)/\$250.00 (2401) \$ applicant's claim(s).

- An appeal **BRIEF** is attached in the pending appeal of the above-identified application \$500.00 (1402)/\$250.00 (2402) \$ 250.00
- Credit for fees paid in prior appeal without decision on merits -\$ ()
- A reply brief is attached. (no fee)
- Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
One Month Extension \$120.00 (1251)/\$60.00 (2251)
Two Month Extensions \$450.00 (1252)/\$225.00 (2252)
Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)
Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$
- "Small entity" statement attached.
- Less month extension previously paid on -\$ ()

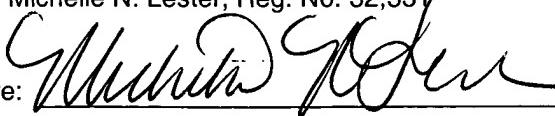
TOTAL FEE ENCLOSED \$ 250.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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By Atty: Michelle N. Lester, Reg. No. 32,331

Signature: 



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APPEAL BRIEF

Sir:

Applicants submit herewith their Brief on Appeal pursuant to 37 CFR §41.37.

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(I) REAL PARTY IN INTEREST

The real party in interest is the assignee, WOODWORKER'S SUPPLY INC., a corporation of the State of Wyoming.

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(II) RELATED APPEALS AND INTERFERENCES

On information and belief there are no other prior or pending appeals, interferences, or judicial proceedings (past or present), known to appellant, the appellant's legal representative, or assignee, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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(III) STATUS OF CLAIMS

Claims 1-18 remain pending. Claims 5,6,13 and 14 have been allowed. Claims 7-10, 17 and 18 have been objected to as depending from a rejected claim but would be allowable if rewritten in independent form. Claims 1-4 and 11-16 [sic 1-4, 11-12, and 15-16] are rejected (The Examiner included claims 13 and 14 in the statement of rejection over the prior art. However, the Examiner reports on the PTOL-326 and in paragraph 5 of the Official Action that claims 13 and 14 are allowed. Therefore, the inclusion of claims 13 and 14 in the stated rejection is understood to be a typographical error). The rejection of claims 1-4, 11-12, and 15-16 is being appealed. A current listing of claims is presented in the Claims Appendix of this Brief.

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(IV) STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection of September 29, 2005.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to push sticks and push blocks and, more particularly, to a push block having a retractable heel for securely engaging and advancing a workpiece over or through woodworking equipment.

In woodworking operations involving equipment such as table saws, routers, planers, jointers, and the like, a push stick or push block is typically used to advance the workpiece through the equipment and past the cutting tool, to reduce the risk of accidental injuries to the fingers and hands. A push block also helps to control the workpiece, to maintain dimensional tolerances.

The invention provides a push block that can be selectively used for flat face engagement or end edge (stepped) engagement with the workpiece. More specifically, the invention provides a push block 10 that includes a heel 30 that has a stored position (Figure 7) and an operative position (Figure 8) to allow the respective modes of use of the push block. Accordingly, when the push block 10 is disposed face down on a flat workpiece 32 with the heel in its stored position, the push block can effectively perform the functions of a flat face push block. When, on the other hand, the heel is disposed in its operative position and the push block is disposed so that the heel can engage an end edge of the workpiece 32, the push block can effectively perform the functions of a fixed heel push block (paragraph [0026]).

Thus and more specifically, the invention provides a main body 12 having a proximal end 22, a distal end 20, a longitudinal axis, and a first, generally flat working surface 16,18 for engaging a top surface of a workpiece; a handle component 14 extending from said main body whereby when said first working surface is disposed in parallel facing relation to the top surface of the workpiece, said handle component is disposed predominantly vertically above said main body (paragraphs [0022] and [0023]); and a heel component 30 extending from said main body so as to have a first,

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operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane (paragraphs [0026] and [0029]), said heel defining a second working surface 38 disposed in a second plane defined at an angle with respect to said first working surface, for selectively engaging a trailing end surface of the workpiece for displacing the workpiece (paragraph [0030]; Figures 1, 3 and 8).

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(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-4, 11-12 and 15 stand rejected under 35 USC §102(e) as being anticipated by Sizemore.¹

Claim 16 stands rejected under 35 USC §103(a) as being unpatentable over Sizemore.

¹ The Examiner's statement of rejection in paragraph 2 of the Official Action also included claims 13, 14 and 16. However, the PTOL-326 and paragraph 5 of the Official Action advised that claims 13 and 14 are allowed. Moreover, in the detailed statement of the Examiner's rejection, claims 13 and 14 are not mentioned. It is therefore understood that the inclusion of claims 13 and 14 in the statement of rejection was an inadvertent typographical error. It is further noted that claim 16 was [also] rejected under §103(a). In view of that rejection it is understood that the inclusion of claim 16 in the §102(e) statement of rejection was an inadvertent typographical error.

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(VII) ARGUMENT

As noted above, claims 1-4, 11-12 and 15 stand rejected as allegedly anticipated by Sizemore. Applicant respectfully traverses this rejection.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

Claim 1 is directed to a push block having a main body having a first working surface, a handle and a retractable heel defining a second working surface.

Sizemore discloses a shoe having retractable shock absorbers. As such Sizemore clearly has nothing to do with a push block device for displacing a workpiece relative to woodworking equipment as recited in applicant's independent claim 1. The Examiner says that Sizemore teaches a shoe that is "capable of being used as a push block device". It is respectfully submitted, however, that such a "capability" is not taught, suggested or advocated by Sizemore.

It is also respectfully submitted that the shoe upper of Sizemore is not a handle component and would not be understood by the skilled artisan to constitute a handle. A "handle" is understood to be a part for holding; it is part of a thing which is held. In

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the case of a shoe, the skilled artisan would understand that the shoe is not designed to have nor intended to have a "handle". Therefore, the Examiner's characterization of the Sizemore shoe as including a main body and a handle is inconsistent with the customary meaning of the word "handle" and inconsistent with the known function of a shoe upper. Thus, a shoe upper would not be construed by the skilled artisan to constitute a handle as recited in claim 1 so as to properly provide the basis for a §102(e) rejection.

It is further respectfully submitted that of the shock absorbers of Sizemore, even if individually or collectively referred to as a "heel", are not taught as nor would they be understood to include a second working surface as claimed. In this regard, Sizemore teaches only the bottom surface of his shock absorbers as intended to make contact with anything and that "working surface" is parallel to the bottom surface of the sole of the shoe. Any engagement of a side surface of the shock absorbers would skew the shock absorbers relative to the receptacles 8 and consequently cause jamming of the shock absorbers. Thus, there is no teaching of a second working surface disposed in a plane defined at an angle with respect to the first working surface (of the main body).

Furthermore, as noted above, claim 1 specifically recites that the second working surface is for selectively engaging a trailing surface of a workpiece. It is clear from the structure and orientation of the shock absorbers in Sizemore that they are intended to be engaged only at their bottom surface and any engagement of a peripheral surface of the shock absorbers would evidently impair their ability to function as disclosed.

Thus, not only would the skilled artisan never consider a shoe to be a suitable for a push block, but he would not consider Sizemore to teach a handle, or to teach a retractable structure defining a second working surface at an angle to a (first) working surface of the main body to which it is mounted. Therefore, the Examiner's anticipatory rejection of claim 1 and claims 2-4 dependent thereon is submitted to be without merit.

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Claims 11 and 12 respectively provide a retention plate for securing the retractable heel to the main body and a slip resistant pad over molded to the plate. With regard to claim 11, the Examiner characterizes the plate on top of element 3 as a retention plate. That protective plate, referred to in Sizemore's disclosure as protective section 14 and/or strong wall 12, is provided to protect the wearer from discomfort from the spring pressure. There is no disclosure whatsoever of protective section 14 (not labeled in the drawings) and/or wall 12 as provided "for securing the retractable" component (e.g., cleats 9) to the "main body 3", as required by claims 11 and 12. In fact it appears that the only thing keeping the cleats from falling out of the "main body 3" is the fact that there are cooperative edges 10 and 11. Even if element 10 is considered to be a "retention plate", with reference to claim 12, there is no teaching of overmolding a slip resistant pad to the "plate 10". In this regard, the Examiner asserts that element 3 is a slip resistant pad. However, because the shoe upper has been characterized by the Examiner as a handle, element 3 is the "main body". Therefore, element 3 (which is the "main body") can not be properly characterized as also reading on a slip resistant pad overmolded to a plate allegedly retaining the cleat with respect to the main body. Thus, the Examiner has not properly read Sizemore on claim 12 either.

With regard to claim 15, the Examiner has failed to fully consider all limitations of claim 15 in labeling the Sizemore shoe. Claim 15 not only requires leading and trailing halves but further provides that the second working surface extends widthwise of the main body. No cleat of Sizemore extends widthwise of the main body since they are provided as discrete circular components. Thus, no working surface is provided that extends widthwise of the main body and faces the leading half of the main body. Each of the cleats has only a single, downwardly facing working surface. The other "surface" of the cleat is a peripherally extending surface that is not disposed as nor used as a

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working surface, is not adapted for surface engagement with any other component, and does not extend widthwise of the main body.

With regard to claim 16 it is understood that the Examiner did not intend to include claim 16 in the anticipatory rejection, in view of the Examiner's rejection of claim 16 under §103 (addressed below).

For all the reasons advanced above it is respectfully submitted that claims 1-4, 11-12 and 15 are not anticipated by Sizemore.

Claim 16 was rejected under 35 USC §103(a) as being obvious from Sizemore. Applicant respectfully traverses this rejection.

Claim 16 provides that the push block main body and handle are molded from a plastic material. In regard to this claim, the Examiner says that Sizemore teaches the material of the handle but is silent on the material of the "heel" and asserts that using plastic to make the "heel" is well known in the art. Evidently, the Examiner has not carefully reviewed claim 16. The material of the retractable heel is not the subject of the claim 16. Rather, claim 16 specifies that the push block main body and handle are molded from a plastic material. Sizemore does disclose the material of the various components of his shoe. In column 2, lines 49-51, Sizemore discloses that the shoe upper 2 and the sole 3 (handle and main body according to the Examiner's characterization of Sizemore) may be made from any number of "conventional" materials such as leather, rubber and the like for comfort and style. Clearly, Sizemore does not teach or suggest that the shoe upper or the shoe sole could or should be molded from plastic.

If the Examiner's rejection is construed as suggesting that it would be "obvious" to use plastic to manufacture the shoe upper and the shoe sole, it is respectfully submitted that the Examiner's rejection is without any merit whatsoever. The Examiner

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has failed to provide any teaching in the prior art that molding a shoe upper and shoe sole from plastic would be an obvious choice to one skilled in the art for a shoe of the type that Sizemore discloses. Therefore, the Examiner has not established a *prima facie* case that it would have been obvious to form the Sizemore shoe upper and shoe sole from molded plastic.

For all the reasons advanced above, it is respectfully submitted that the Examiner's rejections based on Sizemore should not be sustained.

CONCLUSION

For all the reasons advanced above, reversal of the Examiner's Rejection and allowance of all pending claims is solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. (Previously presented) A push block device for displacing a workpiece relative to woodworking equipment, comprising:

a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface for engaging a top surface of a workpiece;

a handle component extending from said main body whereby when said first working surface is disposed in parallel facing relation to the top surface of the workpiece, said handle component is disposed predominantly vertically above said main body; and

a heel component extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane, said heel defining a second working surface disposed in a second plane defined at an angle with respect to said first working surface, for selectively engaging a trailing end surface of the workpiece for displacing the workpiece.

2. (Original) A push block device according to claim 1, wherein the heel projects resiliently downwardly from said first plane so that when upward pressure is applied to said heel in a direction generally perpendicular to said first plane, said heel is displaced vertically with respect to said first plane.

3. (Original) A push block device according to claim 1, wherein the heel is separately formed and secured to the main body.

4. (Original) A push block device according to claim 1, wherein a heel receiving compartment is defined in said main body so that when said heel is deflected vertically

with respect to said first working surface, said heel is received substantially entirely within said main body.

5. (Previously presented) A push block device for displacing a workpiece relative to woodworking equipment, comprising:

a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface;

a handle component extending from said main body whereby when said first working surface is disposed in parallel facing relation to a top surface of a workpiece, said handle component is disposed predominantly vertically above said main body;

a heel component extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane, said heel defining a second working surface disposed in a second plane defined at an angle with respect to said first working surface; and

at least one slip resistant pad secured to at least one of said first and second working surfaces.

6. (Original) A push block device according to claim 5, wherein said at least one pad is over molded to said at least one working surface.

7. (Original) A push block device according to claim 1, wherein said heel includes a head portion defining said second working surface, and first and second legs.

8. (Original) A push block device according to claim 7, wherein said first and second legs are secured to said main body.

9. (Original) A push block device according to claim 8, wherein said first and second legs include pins for being disposed in correspondingly sized and shaped receptacles in said main body.

10. (Original) A push block device according to claim 9, wherein said pins are glued to said receptacles.

11. (Original) A push block device according to claim 1, further comprising a retention plate for securing said retractable heel to said main body.

12. (Original) A push block device according to claim 11, further comprising at least one slip resistant pad over molded to said plate.

13. (Previously presented) A method for advancing a workpiece relative to woodworking equipment with a push block comprising:

providing a push block including a main body having a proximal end, a distal end, a longitudinal axis, and a first, generally flat working surface; a handle component extending from said main body whereby when said first working surface is disposed in parallel facing relation to a top surface of a workpiece, said handle component is disposed predominantly vertically above said main body; and a heel component extending from said main body so as to have a first, operative position, wherein said heel projects vertically below a first plane of said first working surface, and a second, stored position wherein a bottom edge of said heel is disposed in or vertically above said first plane, said heel defining a second working surface disposed in a second plane defined at an angle with respect to said first working surface;

engaging a top surface of the workpiece with said first working surface; and

advancing said workpiece with said push block at least partway past said woodworking equipment while said woodworking equipment works upon said workpiece.

14. (Original) A method as in claim 13, further comprising displacing said push block relative to said workpiece so that the pushblock overhangs a trailing end of the workpiece, and engaging said trailing end with said second working surface.

15. (Previously presented) A push block device according to claim 1, wherein said main body is comprised of leading and trailing halves, wherein said heel portion is defined in said trailing half and wherein said second working surface generally faces in a direction of said leading half and extends widthwise of said main body.

16. (Previously presented) A push block device according to claim 1, wherein said push block main body and handle are molded from a plastic material,

17. (Previously presented) A push block device according to claim 1, wherein said handle includes a grip portion spaced from said main body and a leg portion extending from said grip portion to said main body.

18. (Previously presented) A push block device according to claim 1, wherein said handle comprises a grip portion spaced from said main body and legs extending from adjacent each longitudinal end of said grip portion to said main body.

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(IX) EVIDENCE APPENDIX

No evidence has been submitted during prosecution of this application pursuant to 37 CFR §§1.130, 1.131, 1.132.

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(X) RELATED PROCEEDINGS APPENDIX

(NONE)